

ESTTA Tracking number: **ESTTA139727**

Filing date: **05/09/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175379
Party	Defendant Exceptional Innovation LLC Exceptional Innovation LLC 480 Olde Worthington Road, Suite 350 Westerville, OH 43082 trademarks@bricker.com
Correspondence Address	GREGORY J. KRABACHER BRICKER & ECKLER LLP 100 S 3RD ST COLUMBUS, OH 43215-4291 gkrabacher@bricker.com, trademarks@bricker.com
Submission	Answer
Filer's Name	Gregory J. Krabacher
Filer's e-mail	gkrabacher@bricker.com, aross@bricker.com, qlindsmith@bricker.com
Signature	/Gregory J. Krabacher/
Date	05/09/2007
Attachments	El Answer.pdf (4 pages)(95143 bytes) Exhibit A.pdf (5 pages)(645508 bytes) Exhibit B.pdf (2 pages)(57136 bytes) Exhibit C.pdf (5 pages)(681266 bytes) Exhibit D.pdf (2 pages)(57626 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Bose Corporation,)	
)	Opposition No. <u>91175379</u>
Opposer,)	
)	Re: Serial No. <u>78845279</u>
v.)	
)	Interlocutory Attorney: <u>Elizabeth A. Dunn</u>
Exceptional Innovation LLC,)	
)	
Applicant.)	
)	

ANSWER TO NOTICE OF OPPOSITION

Exceptional Innovation LLC ("EI") hereby answers Bose Corporation's ("Bose") Notice of Opposition. With respect to each allegation proffered by Bose, EI responds as follows:

1. EI is without knowledge sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 1 and therefore denies each and every allegation of this paragraph.
2. EI admits that the records of the United States Patent and Trademark Office show that trademark registrations listed in numbered paragraph 2 were issued on the dates recited and that Bose is listed as the registrant or last listed owner of these registrations. EI is without knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in numbered paragraph 2 and therefore denies each and every remaining allegation of this paragraph.
3. EI is without knowledge sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 3 and therefore denies each and every allegation of this paragraph.

4. EI admits the allegations of numbered paragraph 4 with the clarification that application Serial Number 78845279 relates to a design mark for the lower-cased, italicized word *life* followed by a symbol known in the computing industry as a the "pipe" symbol (i.e., "|") followed by the non-italicized, lower-cased word "wave." Application Serial Number 78845279 does not claim the standard characters LIFE or WAVE. To the extent numbered paragraph 4 implies a claim to standard characters EI denies this allegation.
5. EI denies each and every allegation contained in numbered paragraph 5.
6. EI denies each and every allegation contained in numbered paragraph 6.

AFFIRMATIVE DEFENSE NO. 1

7. The allegations in the Notice of Opposition fail to state a claim for which relief can be granted.

AFFIRMATIVE DEFENSE NO. 2

8. EI is the owner of trademark application Serial No. 78845489 for the design mark *life*|audio for goods identified as the following: "Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely the following-- PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being accessed via client access points, namely the following-- PCs, remote controls,

televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices." A true and accurate copy of Application Serial No. 78845489 as reflected on the United States Patent and Trademark Office website is attached as Exhibit A.

9. Application Serial No. 78845489 was issued a Notice of Allowance after no party filed a Notice of Opposition during the opposition period for this mark. A true and accurate copy of this Notice of Allowance as reflected on the United States Patent and Trademark Office website is attached as Exhibit B.
10. EI is the owner of trademark application Serial No. 78845273 for the design mark *life|tunes* for goods identified as the following: "Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely the following-- PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being accessed via client access points, namely the following-- PCs, remote controls, televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices." A true and accurate copy of Application Serial No. 78845273 as reflected on the United States Patent and Trademark Office website is attached as Exhibit C.

11. Application Serial No. 78845273 was issued a Notice of Allowance after no party filed a Notice of Opposition during the opposition period for this mark. A true and accurate copy of this Notice of Allowance as reflected on the United States Patent and Trademark Office website is attached as Exhibit D.
12. As shown the Exhibits A through D, the identification of goods in the applications for *life|audio* and *life|tunes* are identical to the application for *life|wave*.
13. Bose knew or should have known of the publication of *life|audio* and *life|tunes* in the Official Gazette and the time frame for opposition of these applications.
14. Bose did not oppose either *life|audio* or *life|tunes* during their opposition periods.
15. Having acquiesced to the allowance of *life|audio* and *life|tunes* for the identical goods as *life|wave*, Bose is now estopped from arguing that EI's use of "life" in the mark *life|wave* is likely to cause confusion with Bose registrations for LIFESTYLE (Reg. No. 1,622,251) and LIFESTYLE (Reg. No. 2,108,847).

Respectfully submitted,

Date May 9, 2007

/Gregory J. Krabacher/
Alan J. Ross
Quintin F. Lindsmith
Gregory J. Krabacher
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: 614.227.2369
Fax: 614.227.2300
Email: gkrabacher@bricker.com

Trademark/Service Mark Application, Principal Register

Serial Number: 78845489

Filing Date: 03/24/2006

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK FILE NAME	\\TICRS\EXPORT6\IMAGEOUT6 \\788\454\78845489\xml1\AP P0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	LIFE AUDIO
COLOR MARK	NO
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	792 x 611
OWNER SECTION	
NAME	Exceptional Innovation LLC
STREET	480 Olde Worthington Road, Suite 350
CITY	Westerville
STATE	Ohio
ZIP/POSTAL CODE	43082
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Ohio
NAME OF ALL GENERAL PARTNERS, ACTIVE MEMBERS, INDIVIDUAL TRUSTEES, OR EXECUTORS, AND CITIZENSHIP/INCORPORATION	(1) ST Holdings LLC, United States; (2) Eric Eichensehr, United States
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	009
DESCRIPTION	Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely the following: PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being

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	accessed via client access points, namely the following: PCs, remote controls, televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices.
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/Gregory J. Krabacher/
SIGNATORY NAME	Gregory J. Krabacher
SIGNATORY DATE	03/24/2006
SIGNATORY POSITION	Attorney
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	ET
ATTORNEY	
NAME	Gregory J. Krabacher
FIRM NAME	Bricker & Eckler LLP
STREET	100 S. Third St.
CITY	Columbus
STATE	Ohio
ZIP/POSTAL CODE	43215-4291
COUNTRY	United States
PHONE	(614) 227-2369
FAX	(614) 227-2390
EMAIL	trademarks@bricker.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	007479/133795
OTHER APPOINTED ATTORNEY(S)	Alan Ross
CORRESPONDENCE SECTION	
NAME	Gregory J. Krabacher
FIRM NAME	Bricker & Eckler LLP
STREET	100 S. Third St.
CITY	Columbus
STATE	Ohio
ZIP/POSTAL CODE	43215-4291

COUNTRY	United States
PHONE	(614) 227-2369
FAX	(614) 227-2390
EMAIL	trademarks@bricker.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Fri Mar 24 14:09:51 EST 2006
TEAS STAMP	USPTO/BAS-1992181205-2006 0324140951063062-78845489 -20092532a938fe9f1c76b581 3ffe42d98-ET-1758-200603 24140825539609

PTO Form 1-78 (Rev. 6/2005)

{AM11 for Use of BRP (1/1/00) (1/1/00)}

Trademark/Service Mark Application, Principal Register

Serial Number: 78845489

Filing Date: 03/24/2006

To the Commissioner for Trademarks:

MARK: LIFE AUDIO (stylized and/or with design, see mark)

The literal element of the mark consists of LIFE AUDIO.

The applicant, Exceptional Innovation LLC, a LIMITED LIABILITY COMPANY organized under the laws of Ohio, comprising of (1) ST Holdings LLC, United States; (2) Eric Eichensehr, United States, residing at 480 Olde Worthington Road, Suite 350, Westerville, Ohio, United States, 43082, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 009: Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely the following: PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being accessed via client access points, namely the following: PCs, remote controls, televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices.

The applicant hereby appoints Gregory J. Krabacher and Alan Ross of Bricker & Eckler LLP, 100 S. Third St., Columbus, Ohio, United States, 43215-4291 to submit this application on behalf of the applicant. The attorney docket/reference number is 007479/133795.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: trademarks@bricker.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Gregory J. Krabacher/ Date: 03/24/2006

Signatory's Name: Gregory J. Krabacher

Signatory's Position: Attorney

Mailing Address:

Gregory J. Krabacher

100 S. Third St.

Columbus, Ohio 43215-4291

RAM Sale Number: 1758

RAM Accounting Date: 03/24/2006

Serial Number: 78845489

Internet Transmission Date: Fri Mar 24 14:09:51 EST 2006

TEAS Stamp: USPTO/BAS-1992181205-2006032414095106306

2-78845489-20092532a938fe9f1c76b5813fffe

42d98-ET-1758-20060324140825539609

life|audio

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Feb 27, 2007

GREGORY J. KRABACHER
BRICKER & ECKLER LLP
100 S 3RD ST
COLUMBUS, OH 43215-4291

ATTORNEY
REFERENCE NUMBER

007479/13379

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of Use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION.

Please note that both the "Statement of Use " and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRE-registration form"), to avoid the possible omission of important information. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/845489
MARK: LIFE AUDIO (AND DESIGN)
OWNER: Exceptional Innovation LLC
480 Olde Worthington Road, Suite 350
Westerville, OHIO 43082

This application has the following bases, but not necessarily for all listed goods/services:

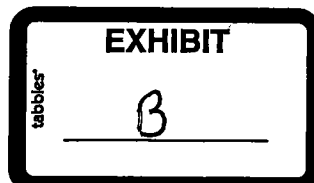
Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

009 - Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely the following-- PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being accessed via client access points, namely the following-- PCs, remote controls.



televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices -- FIRST USE DATE: NONE; -- USE IN COMMERCE DATE: NONE

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS

Trademark/Service Mark Application, Principal Register

Serial Number: 78845273

Filing Date: 03/24/2006

The table below presents the data as entered.

MARK SECTION	
MARK FILE NAME	\\TICRS\EXPORT6\IMAGEOUT6 788\452\78845273\xml1\AP P0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	LIFE TUNES
COLOR MARK	NO
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	792 x 611
OWNER SECTION	
NAME	Exceptional Innovation LLC
STREET	480 Olde Worthington Road, Suite 350
CITY	Westerville
STATE	Ohio
ZIP/POSTAL CODE	43082
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Ohio
NAME OF ALL GENERAL PARTNERS, ACTIVE MEMBERS, INDIVIDUAL TRUSTEES, OR EXECUTORS, AND CITIZENSHIP/INCORPORATION	(1) ST Holdings LLC, United States; (2) Eric Eichensehr, United States
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	009
DESCRIPTION	Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely the following: PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being

EXHIBIT

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	accessed via client access points, namely the following: PCs, remote controls, televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices.
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/Gregory J. Krabacher/
SIGNATORY NAME	Gregory J. Krabacher
SIGNATORY DATE	03/24/2006
SIGNATORY POSITION	Attorney
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	ET
ATTORNEY	
NAME	Gregory J. Krabacher
FIRM NAME	Bricker & Eckler LLP
STREET	100 S. Third Street
CITY	Columbus
STATE	Ohio
ZIP/POSTAL CODE	43215-4291
COUNTRY	United States
PHONE	(614) 227-2369
FAX	(614) 227-2390
EMAIL	trademarks@bricker.com
AUTHORIZED EMAIL COMMUNICATION	Yes
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PHONE	(614) 227-2369
FAX	(614) 227-2390
EMAIL	trademarks@bricker.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Fri Mar 24 12:02:00 EST 2006
TEAS STAMP	USPTO/BAS-1992181205-2006 0324120200774966-78845273 -20047ecaae60248ccbb1849a a5fe42890-ET-1384-2006032 4120018116833

PTA Form 1472 (Rev. 6/2005)

(MID Rev. 06/01/00) (JAN 06/02/00)

Trademark/Service Mark Application, Principal Register

Serial Number: 78845273

Filing Date: 03/24/2006

To the Commissioner for Trademarks:

MARK: LIFE TUNES (stylized and/or with design, see mark)

The literal element of the mark consists of LIFE TUNES.

The applicant, Exceptional Innovation LLC, a limited liability company organized under the laws of Ohio, comprising of (1) ST Holdings LLC, United States; (2) Eric Eichensehr, United States, residing at 480 Olde Worthington Road, Suite 350, Westerville, Ohio, United States, 43082, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

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A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Gregory J. Krabacher/ Date: 03/24/2006

Signatory's Name: Gregory J. Krabacher

Signatory's Position: Attorney

Mailing Address:

Gregory J. Krabacher

100 S. Third Street

Columbus, Ohio 43215-4291

RAM Sale Number: 1384

RAM Accounting Date: 03/24/2006

Serial Number: 78845273

Internet Transmission Date: Fri Mar 24 12:02:00 EST 2006

TEAS Stamp: USPTO/BAS-1992181205-2006032412020077496

6-78845273-20047ecaae60248ccbb1849aa5fe4

2890-ET-1384-20060324120018116833

life|tunes

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Feb 27, 2007

GREGORY J. KRABACHER
BRICKER & ECKLER LLP
100 S 3RD ST
COLUMBUS, OH 43215-4291

ATTORNEY
REFERENCE NUMBER

007479/13379

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The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/845273
MARK: LIFE|TUNES (AND DESIGN)
OWNER: Exceptional Innovation LLC
480 Olde Worthington Road, Suite 350
Westerville, OHIO 43082

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

009 - Computer server hardware, firmware and software for use in the amplification and distribution of multiple streams of digital audio through home and business wired and wireless networks to remotely located speakers; said hardware, firmware, and software capable of simultaneously amplifying and distributing said multiple streams; said hardware, firmware, and software further being capable of distributing audio from multiple audio playing sources, namely, the following-- PCs, CD players, MP3 players, high definition audio players, receivers, radio and satellite radio tuners; said device further capable of being accessed via client access points, namely, the following-- PCs, remote controls.

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televisions, audio-video controllers, touch panels, touch screens, wireless devices, and mobile devices -- FIRST USE DATE: NONE; -- USE IN COMMERCE DATE: NONE

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS